

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1149 of 1994

with

CIVIL REVISION APPLICATION No 1150 & 1151 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J S VAKIL & CO.

Versus

JAVNIKA FABRICS PVT. LTD.

Appearance:

1. Civil Revision Application No. 1149 of 1994
MR SK BUKHARI for Petitioner
MR DEEPAK M SHAH for Respondent No. 1
2. Civil Revision Application No 1150 of 1994
MR SK BUKHARI for Petitioner
MR DEEPAK M SHAH for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 02/09/97

1 These three CRAs are filed by the same petitioner/plaintiff against the respondent-defendants on being dissatisfied by the order passed by the City Civil Court, Ahmedabad in Summary Suit Nos 1259, 1260 and 1261/94 respectively. The plaintiff in each suit has taken out summons for judgment in Summary Suit No.1151/94 for the principal amount of Rs.1,08,921/- with interest of Rs.38080, in Summary Suit No.1260/93 for principal amount of Rs.42385 and in Summary Suit No.1261/93 for principal amount of Rs.50515/-. The Ld.Chamber Judge has passed order in each suit granting unconditional leave to defend and directing the defendants to file written statement within four weeks from the date of the order i.e. 28.10.93.

2. Having heard Mr.S.K.Bukhari for the petitioner-plaintiff in each CRA and Mr.D.M.Shah for respondent-defendant in each CRA and having considered the binding precedent of the Supreme Court reported in AIR 197 SC 577 and applying the principle laid down therein this court is of the opinion that these are not the cases wherein plausible defense is made out by the defendant which would entitle him to unconditional leave to defend. However, since the claim of the plaintiff in each case is disputed by the defendant and the matter is to proceed to trial and each party has to establish his case imposition of some reasonable condition looking to the defense of the defendant in each case which prima facie appears to be moonshine defense, in my opinion interest of justice will be met if the defendant/defendants in each case is/are directed to deposit the following amounts as condition for granting leave to defend:

i) In Summary Suit No.1261/--Rs.12,000/- as condition to defend the suit to be deposited by 31st December, 1997 with liberty to plaintiff to withdraw the same on furnishing running security for a period of seven years. In case the plaintiff does not withdraw the amount on the aforesaid condition, the said amount on expiry of period shall be deposited in scheduled bank by way of FDR for a period of 5 years.

ii) In Summary Suit No.1260/93 --Rs.12,000/- as condition to defend the suit to be deposited by 31st December, 1997 with liberty to plaintiff to withdraw the same on furnishing running security for a period of seven years.

In case the plaintiff does not withdraw the amount on the aforesaid condition, the said amount on expiry of period shall be deposited in scheduled bank by way of FDR for a period of 5 years.

iii) In Summary Suit No.1259/93--Rs.25,000/- as condition to defend the suit to be deposited by 31st December, 1997 with liberty to plaintiff to withdraw the same on furnishing running security for a period of seven years. In case the plaintiff does not withdraw the amount on the aforesaid condition, the said amount on expiry of period shall be deposited in scheduled bank by way of FDR for a period of 5 years.

In the result all the three CRAs partially succeed to the aforesaid extent and rule in each CRA is made absolute to the aforesaid extent. No costs.

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